REMARKS

Summary Of The Office Action & Formalities

Status of Claims

Claims 1-9 and 12-20 are all the claims pending in the application. By this Amendment, Applicant is amending claims 6 and 15-18. No new matter is added.

Claim Objections

Claims 15-18 and 19 are objected to for the reason set forth at page 2 of the Office Action. Applicant is amending the claims to overcome this rejection. Regarding claim 19, proper antecedent basis exists, as claim 1 recites "said actuator means (40) include a lateral ***actuator element***."

Claim Rejections - § 112

Claim 6 is rejected under 35 U.S.C. § 112, second paragraph, for the reason set forth at page 2 of the Office Action. Applicant is amending the claim to overcome this rejection.

Allowable Subject Matter

Claim 6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Art Rejections

1. Claims 1, 2, 4, 8, 12 and 15-20 are rejected under 35 U.S.C. § 102(b) as being anticipated by Ward (US 2,666,667).

2. Claims 3, 5, 7, 13 and 14 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Ward (US 2,666,667).

3. Claim 9 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Ward (US 2,666,667) in view of Fuchs et al. (US 6,708,846).

Applicant respectfully traverses.

Claim Rejections - 35 U.S.C. § 102

1. Claims 1, 2, 4, 8, 12 And 15-20 In View Of Ward (US 2,666,667).

In rejecting claims 1, 2, 4, 8, 12 and 15-20 in view of Ward (US 2,666,667), the grounds of rejection state:

> Ward '667 discloses a fluid spray device comprising all the featured elements of the instant invention, note specifically body 1; reservoir 90; spray means/mechanism/rod 34; actuator means/element comprising a lateral actuator element/pivot tab 15; opening means/device/needle 29; receiver means/support/snap fastener 2/10/31; and lateral access means comprising a window 3.

Office Action at page 3. Applicant kindly request the Examiner to reconsider for the reasons set forth below.

Ward discloses a dispenser for use with a capsule containing material to be dispensed under pressure. The dispenser comprises a body 1, with a lateral aperture 3 for insertion of the capsule.

The upper end of the body 1 has a longitudinal recess 11 for receiving a valve spring 12, and a transverse aperture 13 for receiving:

- a nozzle block 14, which upper surface forms a valve seat 26 which cooperates with a valve disk 24, an inlet passage (bore) 27 extending downwardly from the center of the valve seat 26;
- a piercing pin 29 for piercing the capsule, the piercing pin having a central bore which continues the passage 27 downwardly;

- upper end 34 of a (lateral) operating lever 15, engaging the top of the valve disk 24 and normally pressed thereagainst by spring 12 so as to force the valve disk 24 against the seat 26 and seal off the bore 27.

The base of the body 1 is slotted and receives a plate having a threaded central opening 6. A cup shaped member 7 fits over the lower end of body 1 and carries a central screw 8 cooperating with the lower threaded opening 6.

The upper portion 10 of the screw 8 serves as an abutment for forcing the capsule upwardly within the body 1, and for piercing the capsule (against the piercing pin) and holding it firmly in dispensing position, while the passage to the discharge nozzle is prevented. Indeed, the fluid can enter passage 27, but is stopped by the valve disk 24, which is always pressed by spring 12, until actuation of the lever.

Therefore, after assembly and before the first actuation of the lever, the reservoir has already been opened by the piercing means. Thus, after assembly, there is a risk of contamination of the content, and the dispenser as a whole must be stored in a cold room or in sterile conditions.

On the contrary, with the present claimed dispenser, even after assembly, the content of the reservoir remains protected (by the sealed plugs 22, 23) until the device is actuated for the first time (see figure 3 and description page 6, lines 10-14).

It is clear from present claim 1 that "said reservoir 20 is closed in sealed manner before the spray device is actuated for the first time, the body including reservoir opening means 11 adapted to open said reservoir 20 while the device is being actuated", and not before actuation.

Accordingly, Ward does not anticipate claim 1.

Claim 12 recites: "the reservoir is separate from the body, filled with fluid, sealed prior to assembly in the body and remains sealed until the spray mechanism is actuated for a first time . . ."

Accordingly, Ward '667 does not anticipate claim 12.

Claim Rejections - 35 U.S.C. § 103

1. Claims 3, 5, 7, 13 And 14 Over Ward (US 2,666,667).

In rejecting claims 3, 5, 7, 13 and 14 over Ward (US 2,666,667), the grounds of rejection state:

> Ward '667 discloses all the featured elements of the instant invention except for the two diametrically-opposite windows; the reservoir comprising first and second plugs; and the device being structured to be a nasal spray device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide two diametrically-opposite windows, since such a modification would merely be the duplication of parts and the apparatus of Ward '667 would work equally as well with one window or two diametrically-opposite windows, the additional window further facilitating the insertion of the reservoir.
>
> As to claim 5, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a reservoir having a first and second plugs with the fluid being disposed between the two plugs, since such reservoirs are well known in the capsule/cartridge art and the apparatus of Ward '667 would perform equally as well with the one plug as shown or with two plugs having the fluid being disposed between the two plugs and the piercing means 29 piercing the second plug.
>
> As to claims 13 and 14, it would have been obvious to one having ordinary skill in the art at the time the invention was made to structure the device of Ward '667 to be a nasal spray device since the device would be capable of dispensing a dose of fluid into a nasal cavity by turning the device sideways and placing the discharge orifice 20 adjacent the nasal cavity.

Office Action at pages 3-4.

Without agreeing to or substantively commenting on the grounds of rejection of claims 3, 5, 7, 13, and 14, these claims are allowable at least by reason of their respective dependencies.

2. Claim 9 Over Ward (US 2,666,667) In View Of Fuchs et al. (US 6,708,846).

In rejecting claim 9 over Ward (US 2,666,667) in view of Fuchs et al. (US 6,708,846), the grounds of rejection state:

> Ward '667 discloses all the featured elements of the instant invention except for the lateral access means including a removable cover. Fuchs et al shows a fluid spray device having a removable cover 66. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a removable cover as part of the lateral access means of Ward '667, as taught by Fuchs et al, since such a modification would protect the discharge orifice from contamination and protect the device from damage.

Office Action at pages 4-5.

Claim 9 is allowable at least by reason of its dependency.

Furthermore, Fuchs et al. describes a dispenser having an exchangeable dispensing unit and an actuating unit (having a tensionable and releasable mechanism). The actuating unit is separable from the dispenser unit and reusable. But the medium container (reservoir) disclosed in this patent is made as an integral part of the dispensing unit. Therefore, the reservoir disclosed in Fuchs et al. does not form a unit separate from the dispenser body provided with the spray orifice. Contrary to present invention, it is not possible to assemble the device as a whole, without the reservoir alone. Therefore, the dispenser of Fuchs et al. would not have suggested the presently claimed device, which is simple to assemble and for which the requirements in sterile zone surface area during filling and in cold room cubic capacity during storage are as small as possible.

Furthermore, even if one skilled in the art wanted to obtain the advantages of the present invention, neither applied patents would lead the skilled artisan in that direction, as these patents would not arrive to the present device which structure and functioning completely differ.

In fact, it would be impossible to combine the dispensers of Ward and Fuch et al., as their functioning (especially their actuating mechanism) are not compatible.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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